GLOBAL EXPANSION GUIDEBOOK

TAX

France

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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax.*

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

FRANCE

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RESIDENCE AND BASIS FOR TAXATION

A company is a resident of France if its legal seat or place of effective management is in France. As a general rule, the corporate income tax base is territorial.

Domestic

Profits of a resident corporation generally are subject to French corporate tax only if derived from a business operated in France (including any capital gains, dividends and interest derived from French or non-French investments), real estate assets located in France or activities taxable in France pursuant to a double tax treaty. Resident corporations can be subject to tax in France on foreign source income under anti-avoidance rules (eg, CFC rules).

Foreign

Foreign corporations are not subject to French corporate tax unless they have in France:

- An autonomous establishment
- A dependent agent empowered to act on behalf of the corporation or
- A complete cycle of activity.

For residents of tax treaty countries, these concepts generally are superseded by the permanent establishment rules set out in the applicable double tax treaty.

TAXABLE INCOME

Domestic

Taxable income is the net income as determined by the company's profit and loss statement, reduced by certain non-taxable items and increased by certain non-deductible expenses, such as the interest deduction limitation rules.

The Finance Act for 2019 has introduced from January 1, 2019 new rules regarding interest deductibility. In particular, net financial charges may be deductible up to the higher of the following 2 amounts:

- EUR3 million and
- 30 percent of the adjusted taxable income, before offsetting of tax losses.

Specific rules apply to members of a tax consolidated group as well as to thin-capitalized companies.

Moreover, other limitations on interest deductibility may be triggered, under certain conditions.

The Finance Act for 2020 has transposed into French law the provisions regarding hybrid mismatches of Directive (EU) 2016/1164 of 12 July 2016 (ATAD I) as amended by Directive (EU) 2017/952 of 29 May 2017 (ATAD II). These provisions aim at neutralizing the tax effects of hybrid mismatch arrangements, which exploit differences in the tax treatment of an entity or instrument under the laws of t2 or more EU member states. ATAD II extends the scope of these provisions to arrangements involving non-EU countries.

Foreign

Foreign corporations are subject to French corporate tax on French-source income from profits derived from a business operated in France, real estate assets located in France, a share of profits in a French partnership (except for partnerships that are regulated investment funds – SLP or société de libre partenariat), dividends from a French source or services rendered in France. Tax treaties can reduce or eliminate these taxes. Specific tax rules apply to:

- Investors or payments related to a "non-cooperative jurisdiction" and
- Capital gains on "substantial participations" (more than 25 percent of financial rights).

TAX RATES

The Finance Act for 2018 provided for a progressive reduction of corporation tax rates to 28 percent on January 1, 2020, applicable from the first euro, 26.5 percent on January 1, 2021 and 25 percent as from January 1, 2022. Graduated income tax rates start at 15 percent with a top rate of 25.83 percent in 2022 (including a 3.3-percent additional contribution).

TAX COMPLIANCE

Corporate income tax returns must be filed no later than the second working day after May 1 for calendar year taxpayers, or within 3 months after the end of the relevant financial year otherwise, with no extensions.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

No broad-based rulings are available. On certain issues, taxpayers can request a private letter ruling that applies only to the specific issue.

Tax incentives

There are tax incentives for specific activities, including R&D credits. The payroll tax credit for competitiveness and employment has been replaced as from January 1, 2019 by social charges exemption.

CONSOLIDATION

The French tax consolidation regime allows a French parent company and its 95-percent-owned domestic subsidiaries to combine their profits and losses and to pay corporate income tax on the consolidated result. A French parent company indirectly owning at least 95 percent of French affiliates through 1 or more foreign companies based in the EU, Iceland, Norway or Liechtenstein (intermediary companies) can also form a tax group. Similarly, it is possible to set up a tax group between sister companies with the parent company established in the EU, Iceland, Norway or Liechtenstein.

PARTICIPATION EXEMPTION

A participation exemption regime is applicable to long-term capital gain (88-percent exempt) and dividends (as a rule, 95-percent exempt), subject to a minimum shareholding of 5 percent of the share capital and a minimum holding period of 2 years. A specific participation-exemption regime applies to dividends distributed within a tax consolidated group (99-percent exempt) as well as, under conditions, to distributions made by foreign companies based in the EU, Iceland, Norway or Liechtenstein. Capital gain on the disposal of shares of real estate companies is excluded from the participation exemption regime.

CAPITAL GAIN

Capital gains realized by corporations that are subject to corporate income tax are treated as regular income, subject to exceptions. One exception is the one that applies to long-term capital gains on shares benefiting from the participation exemption regime, as described above.

DISTRIBUTIONS

A participation exemption regime is available for eligible dividends. Non-eligible distributions are subject to corporate income tax at ordinary rates.

LOSS UTILIZATION

Operating losses can be carried forward without time limitation but with a utilization cap per financial year of EUR1 million plus 50 percent of the taxable profit of the current financial year. Losses can be carried back only for the previous financial year, with a EUR1 million cap.

TAX-FREE REORGANIZATIONS

For all types of restructurings (eg, mergers, spinoffs or partial spinoffs), a favorable tax regime may apply if the assets are transferred under special valuation rules.

ANTI-DEFERRAL RULES

CFC rules

If a French company subject to corporate income tax in France has a foreign branch or if it holds, directly or indirectly, an interest (eg, shareholding, voting rights or a share in the profits) of at least 50 percent in any type of structure benefiting from a privileged tax regime in its home country (ie, effective tax paid that is 40-percent lower than the tax that would be paid in France in similar situations), the profits of such a foreign branch, entity or enterprise are subject to corporate income tax in France. Under certain conditions, the shareholding threshold is reduced to 5 percent if more than 50 percent of the foreign entity is held by French companies acting in concert or by entities controlled by the French company.

FOREIGN TAX CREDITS

No credit is given for the underlying corporate income taxes levied abroad, and, unless a relevant double tax treaty provides, foreign withholding taxes levied on the income received in France are not creditable against French tax on that income. Foreign tax paid in a tax treaty country may not be deducted from taxable income.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

A 3-percent tax applies in principle to all entities having immovable properties in France, irrespective of their form and whether they have the legal capacity to act as a legal entity. The 3-percent tax applies to corporations, funds, trusts and other institutions. In practice, this 3-percent tax is not due if the chain of ownership of the real property is duly disclosed to the French tax authorities.

The transfer of ownership of a real estate asset is usually subject to registration duty of 5 percent to 6 percent, which may be reduced under certain conditions to 0.815 percent, including the real estate security contribution of 0.1 percent (eg, asset dealer transactions), or to EUR125 (eg, acquisition of a plot of land with commitment to build on the land).

Specific rules apply to :

- Office sales in the Paris region and

- The sale of building plots or new buildings subject to VAT.

TRANSFER PRICING

The French legislation does not make any specific references to what are acceptable transfer pricing methodologies. In practice, however, the methodologies stated in the OECD guidelines are employed in most cases.

WITHHOLDING TAX

Withholding tax may be reduced or eliminated by applicable tax treaties or EU directives. An increased withholding tax rate of 75 percent is levied on dividends, interest or royalties paid to a beneficiary or on an account located in a non-cooperative state or territory.

Dividends, interest, etc.

As a general rule, dividends paid to non-residents are subject to a 12.8-percent withholding tax for individuals or 25-percent withholding tax for companies. The Finance Act for 2018 provides that the withholding tax applicable to companies on dividend payments will be aligned to the French corporate tax rate as of January 1, 2020 (see Tax Rates).

Generally, no withholding tax is levied on French-source interest, provided it is arm's length.

Royalties and service fees

As a general rule, a withholding tax may be levied, at the same rate as the standard corporate income tax rate, on royalties and service fees paid to non-residents. See Tax Rates above.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

No stamp duties. The Finance Act for 2019 repealed registration duties levied on share capital increases of French companies and most reorganizations. However, registration duties at a proportional rate may be levied, in particular in the cases of acquisition of shares in a capital company, transfers of real estate assets, real estate companies or going concerns.

EMPLOYMENT TAXES

Employees and employers must pay contributions for health insurance, unemployment insurance and the national pension scheme. These contributions are deducted at source from salary payments. Since 2019, income tax has had to be withheld at source by employing companies.

DAC 6 : Mandatory disclosure rules

On October 21, 2019, the French government published Ordinance No. 2019-1068 which transposes into French law the European Directive 2018/822 amending Council Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (commonly referred to as DAC 6).

DAC 6 requires intermediaries (or taxpayers, if there is no intermediary) to report to the competent tax authorities all cross-border arrangements that contain 1 or more hallmarks (indicating a potential risk of tax evasion), as referred to in new Article 1649 AH of the General Tax Code. Reported information will automatically be exchanged with all EU tax authorities through a central European register.

"Pillar II" Directive

Following the publication by the Organization for Economic Co-operation and Development (OECD) of the GloBE rules, on December 14, 2022, the European Union adopted a directive providing for the introduction of a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups within the EU.

This directive, which aims to ensure taxation at a minimum rate of 15 percent for profits made by multinational groups, must be implemented by the EU member countries by December 31, 2023 to be effective as of January 1, 2024.

OTHER TAX CONSIDERATIONS

Not applicable for this jurisdiction.

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